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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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EXAMINER

CLARDY, S

ART UNIT PAPER NUMBER

1617

DATE MAILED: 10/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/827,110

Applicant(s)

BLUME, DAVID

Examiner

S. Mark Clardy

Art Unit

1617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>4/19/04</u> . | 6) <input type="checkbox"/> Other: _____ |

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Claims 1-19 are pending in this application.

Applicant's claims are drawn to methods of growing crops comprising applying to soil:

- a) Dried distiller's grain and soluble (=DDGS; claims 1-10)
- b) DDGS + compost (claims 11-16)
- c) dried distillers grain (claims 17-19).

While the term "dried distiller's grain and soluble" is grammatically jarring, it does appear to be an accepted term of the art (see p. 6+).

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5 and 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 5 and 6 recite the term "DDGS" in line 1 of each claim. There is insufficient antecedent basis for this limitation in the claim. The first use of the term "dried distiller's grain and soluble" in the independent claims should be followed with the abbreviation "(DDGS)", which should then be used throughout the remainder of the dependent claims.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combined teachings of Pittman et al (US 2,261,923), Ensley (US 3,150,979), Grybek et al (US 3,712,802), and Ahlnas et al (US 5,482,529).

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Pittman et al teach the utility of distillery slop derived from corn (third paragraph) for making cattle feed and fertilizer material (first paragraph). An object of the invention is to provide a process of recovery of soluble protein matter from waste materials (ninth paragraph). Thus, the utility of corn byproducts from distilleries in cattle feed and fertilizer compositions was known in the art as early as 1938.

Ensley teaches that ground corn meal, wheat middlings, and distillers' grains and solubles (col 2, lines 33-35) are useful supplements in cattle and sheep feed (col 1, lines 9-10). One of ordinary skill in the art would be motivated to use the specific components disclosed herein for the "distillery slop" of Pittman et al because that reference discloses that such distillery waste is useful for making both animal feed and plant fertilizer.

Grybek et al teach the plant growth promoting utility of waste materials such as cereal grain waste and distillery residues (col 2, lines 39-48) for use in treating crops such as corn (col 5, Table I). One of ordinary skill in the art would be motivated to use the compositions of Pittman et al and Ensley et al for treating corn because Grybek et al teaches the same distillery waste for this utility.

Ahlnas et al teach distiller's grain (col 3, lines 36-44) as a component in fertilizer compositions.

One of ordinary skill in the art would be motivated to combine these references in order to make use of readily available waste streams to make effective plant fertilizer compositions.

Thus it would have been *prima facie* obvious to the ordinary artisan at the time the invention was made to have used applicant's DDGS in nutrient compositions for application to

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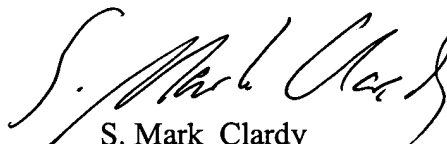
plants such as corn because the prior art teaches the utility of recycling such components from distillery waste streams to make animal feed and fertilizer compositions.

No unobvious or unexpected results are noted; no claim is allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to S. Mark Clardy whose telephone number is 571-272-0611. The examiner can normally be reached on 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



S. Mark Clardy
Primary Examiner
Art Unit 1617

September 28, 2005